

USAWC STRATEGY RESEARCH PROJECT

**U.S. DETAINEE POLICIES AND PRACTICES: AMERICA AT A STRATEGIC
CROSSROAD**

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ABSTRACT

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The President's contentious detainee policies established in the interest of national security have to some extent isolated the United States from its allies and other fledgling democracies. Have those policies also put the United States at a strategic crossroad that leads to international illegitimacy and weakened influence and effectiveness in the global war on terrorism? This paper will examine moral, legal, political, and other implications of U.S. detainee policy which may have put the United States at a strategic crossroad in winning the war on terrorism. The examination will briefly reflect on the development and importance of the conventions on humane treatment of prisoners during war; review the Bush administration's current policy on detention; analyze some of the most significant consequences of that policy; and finally suggest how America can remain on the road of legitimacy while still achieving its national security objectives.

U.S. DETAINEE POLICIES AND PRACTICES: AMERICA AT A STRATEGIC CROSSROAD

To win the war on terror, we must be able to detain, question, and, when appropriate, prosecute terrorists captured here in America, and on the battlefields around the world.¹

—President George W. Bush,
September 6, 2006

On 28 April 2004, the CBS News program *Sixty Minutes* first exposed the harrowing images of prisoner abuse by American soldiers at the Abu Ghraib prison in Iraq. The investigative news piece spawned international media frenzy and cast world-wide condemnation on the United States. Reeling from this discovery, the Department of Defense would initiate comprehensive investigations, hold accountable those who were responsible, and implement improved procedures and controls to preclude future incidents of abuse. More importantly, these events would force the executive branch of our government to redefine for the world its policies on torture, interrogation, and humane prisoner treatment in the post-9/11 world. This process is still on-going today.

Clearly, the President's contentious detainee policies which he arguably established in the interest of national security have to some extent isolated the United States from its allies and other fledgling democracies. However, have those policies also put the United States at a strategic crossroad that leads to international illegitimacy and weakened influence and effectiveness in the global war on terrorism? Has the time come to choose a path?

Beyond the most obvious result of intensified anti-American sentiment around the globe, a perceived policy of continued prisoner mistreatment poses far more serious implications for the United States. The purpose of this paper is to demonstrate how moral, legal, political, and other implications from current detainee policy put the United States at a strategic crossroad in winning the war on terrorism. To that end, the paper will briefly reflect on the development and importance of the conventions on humane treatment of prisoners during war; review the Bush administration's current policy on detention; analyze some of the most significant consequences of that policy; and finally suggest how America can remain on the road of legitimacy while still achieving its national security objectives.

Regulating the Conduct of War—International Law and the Geneva Conventions

Attempts to regulate war date back to antiquity. These efforts were based on the philosophical premise that individuals belonging to the human race possess certain core rights

that are always applicable and commonly called human rights. Providing for a more narrow focus, humanitarian laws (laws of war) have served to define appropriate military conduct according to the basic principles of military necessity, humanity, and chivalry. During honorable conflict, modern professional armies were expected to exercise restraint. The resulting “warrior code” served to channel violence, protect civilian bystanders from attack, and keep the use of force proportional and limited to military necessity.²

Efforts to formalize humanitarian law began in earnest during the 19th century. The horror and cruelty of battle during the U.S. Civil War prompted President Abraham Lincoln to order the War Department to draft rules governing the army’s conduct during wartime. Issued in 1863, these rules mandated humane treatment of prisoners of war and the wounded. Historians consider President Lincoln’s initiative the first attempt by an army to regulate its own use of force.³

That same year in Switzerland, Jean-Henry Dunant, a Geneva Banker, founded the International Committee of the Red Cross (ICRC) and resolved to champion efforts to preclude similar tragedies of inhumane treatment. The ICRC-sponsored conferences (1864, 1899, 1907, 1949) in Geneva, Switzerland, and The Hague, Netherlands, led to the adoption of conventions calling for the humane treatment of the sick and wounded during hostilities, the humane and respectful treatment of civilian non-combatants and prisoners of war, and the prohibition of attacks on civilian targets or the use of methods of warfare likely to lead to high levels of civilian casualties.⁴

Perhaps the most important reason to support and comply with the practices of the Geneva Conventions is that they serve as a mechanism to encourage universal fair treatment of prisoners (reciprocity) and as a basis to prosecute violators. The possibility of being treated humanely if captured gives incentive to soldiers to abide by the laws of war. Agreement on universally accepted standards of treatment also means that those who harm U.S. soldiers and citizens abroad can be arrested and prosecuted. Without the threat of being held accountable, other states are less likely to grant captured U.S. soldiers and military contractors the same protections of the Geneva Conventions. This is why reinterpreting the scope of the Geneva Conventions could eventually hurt the United States. By tolerating “gray areas” with regard to protection and human dignity, as the Bush administration’s interpretations about the Geneva Conventions and interrogation techniques do, creates an environment in which others can do the same.⁵ In essence, noncompliance with the Geneva Conventions, whether real or perceived, can trigger a broader erosion of respect for them which can potentially lead to

conflicts with untold immoral atrocities. If that is the case, why would the Bush administration consider an alternative understanding and application of the Geneva Conventions?

The Bush Detainee Policy

The terrorist attacks of September 11, 2001, became a watershed event in shaping official United States attitudes toward international law. While the United States won worldwide support for its initial response to the attacks in November 2001, President Bush drew domestic and international criticism for his decision to circumvent Geneva Convention provisions in the treatment of prisoners captured in Afghanistan and to not recognize Al Qaeda, Taliban, and other terrorist fighters as prisoners of war.⁶ The administration argued that the United States was fighting a very different enemy than those described in the Geneva Conventions. Al Qaeda and other terrorists are non-state actors which do not represent any signatory country or nation of the Geneva Conventions. They wear no distinctive uniforms and generally do not carry weapons openly. They deliberately target civilians, and where possible, do so in ways that maximize rather than minimize injury.⁷ Instead, the administration has opted to classify them as “unlawful combatants” and to potentially hold them indefinitely. Since November 2001, over 750 of the most ardent terrorist suspects have been held in long-term military custody at detainee facilities located in Guantanamo Bay, Cuba. And, thousands more have been detained in Iraq as a result of Operation Iraqi Freedom beginning in 2003.

The President’s controversial position on detention has not only attracted worldwide criticism, but also generated rifts within his administration.⁸ Tim Golden reported in the *New York Times* that in the days following the President’s determination that the Geneva Conventions would not apply to detainees, key cabinet officials and senior military advisors (then Secretaries Colin Powell and Donald Rumsfeld and Chairman of the Joint Chiefs of Staff General Richard Myers) asked the President to reconsider applying prisoner of war status to the Taliban fighters. Secretary Powell was principally concerned with the risk U.S. troops would face in Afghanistan and future conflicts if the administration failed to consider the Geneva Conventions in the handling of detainees.⁹ Powell warned that by not applying Geneva Conventions standards to the detainees, our nation would “reverse over a century of U.S. policy and practice in supporting the Geneva Conventions and undermine the protections of the law of war for our troops.”¹⁰

Similarly, many members from both parties of our government’s legislative branch have adamantly criticized President Bush’s policy and have called for the closure of the detention facility at Guantanamo Bay. Among the most vocal members of Congress supporting humane

treatment and interrogation standards have been Republican Senators John W. Warner (Virginia), Lindsey O. Graham (South Carolina) and John McCain (Arizona), who himself was tortured as a prisoner of war in North Vietnam. As McCain explained, "If we somehow carve out exceptions to treaties...then it will make it very easy for our enemies to do the same in the case of American prisoners...We must remain a nation that is different from, and above, our enemies."¹¹

Highly active on detainee treatment issues, Senator McCain recently championed amendment number 1977 to the Senate Department of Defense Appropriations Act. The amendment was signed into law and became known as the Detainee Treatment Act of 2005. The law specifically prohibits inhumane treatment of prisoners in the custody of the U.S. military and requires prisoner interrogations be conducted in accordance with approved techniques outlined in Army Field Manual 34-52, Intelligence Interrogation.¹² After approving the bill however, President Bush issued a signing statement to clarify his interpretation of the law. The President's interpretation of the law allows for considerable flexibility in the interests of national security. In essence, the signing statement signaled the President's intention to follow the law but would not let the law restrain his presidential powers in dealing with terrorist suspects to protect America.¹³ In this author's opinion, the signing statement signals a blatant disregard for the law on humane treatment.

In addition to prohibiting inhumane treatment of detainees, the Geneva Conventions also provide for the release or repatriation of prisoners of war once hostilities end. However, because the Bush administration does not define detainees captured during the global war on terrorism as lawful combatants, they are not entitled to the status of prisoners of war. In addition, since the war on terror is on-going, the President's policy does not afford them the provisions of release or to be tried using U.S. criminal or military court martial proceedings. Instead, the policy allows U.S. forces to detain them indefinitely while a very ponderous approach is taken to determine the appropriate due process for unlawful combatants.

For the President, due process could be met by using military commissions to try illegal combatants. This framework to try illegal combatants was established by a presidential executive order issued on November 13, 2001. President Bush explained that military commissions have been used by presidents from George Washington to Franklin Roosevelt to prosecute war criminals because the rules for trying enemy combatants in a time of conflict must be different from those for trying common criminals or members of our own military.¹⁴ Under this order, these commissions apply only to non-U.S. citizens and are designed to protect the individual rights of the accused while safeguarding classified information used as evidence

in the proceedings.¹⁵ However, because military commission-style proceedings afford considerably fewer legal rights and protections than other proceedings overall, civil liberties advocates were dissatisfied with this framework. The judicial branch of our government was also dissatisfied with the President's due process framework and intervened.

In June 2006, the U.S. Supreme Court dealt a severe blow to President Bush's highly controversial system for holding and trying detainees. Salim Ahmed Hamdan, a Yemeni prisoner being held at the Guantanamo Bay facility in Cuba, filed a petition for *habeas corpus*. The right of *habeas corpus* allows a prisoner to have his detention legally reviewed by a court. In the landmark case of *Hamdan vs. Rumsfeld*, the court ruled that the military commissions set up by the Bush administration to try detainees and other terrorist suspects were illegal and lacking the protections required under the Geneva Conventions and the U.S. Uniform Code of Military Justice.¹⁶ Subsequently, the court's decision left the President and Congress with two options: either require detainees to be tried under the military's existing court martial system or create a "new and improved" legal version of the administration's existing commissions.¹⁷

On September 6, 2006, the President forwarded draft legislation to Congress outlining the creation of new military commissions to try detainees for war crimes. The new structure would provide for genuinely independent tribunals headed by military judges with a full complement of officers as jurors to better isolate the process from command influence.¹⁸ Most importantly, the new commissions would prohibit the use of evidence obtained by torture. However, the draft legislation still would not provide certain legal protections desired by civil rights advocates such as a right to a "speedy trial", protections against admissible "hearsay" evidence, and a right to a full appeals process.¹⁹ While more closely aligned with the rules and practices of military courts martial, the proposed commissions still contain contentious legal issues.

Defining the status of illegal combatants and how they will be prosecuted is clearly an incomplete and evolving process. Process aside, is the President's current path on the treatment and trials for terrorist suspects ill-advised? On balance, the policies arguably established in the interest of national security may actually have weakened our effectiveness in achieving those same objectives.

The Detainee Policy Paradox—Benefits vs. Consequences

What is the underlying motivation for the President's uncompromising adherence to controversial policies concerning the treatment of detainees captured during global war on terrorism operations? A review of the President's strategy for national security may provide some insights to this question. In his introductory comments to the National Security Strategy,

the President advises..."America is at war...and his most solemn obligation is to protect the security of the American people."²⁰ Following the terrorist attacks of 9/11, the President realized America could face a future of long-term terrorist violence, and extraordinary measures may be necessary to detain, question, and, when appropriate, prosecute terrorist suspects to preclude continued violence on U.S. soil. The President's detainee policies and due process framework are an extension of those extraordinary measures. On September 6, 2006, from the East Room of the White House, the President discussed the creation of military commissions to try terrorist suspects in the interests of national security.

Nearly five years have passed since 9/11...and we are thankful that the terrorists have not succeeded in launching another attack on our soil...The terrorists have not succeeded because of the hard work of thousands of dedicated men and women in our government and...because our government has changed its policies—and given our military, intelligence, and law enforcement personnel the tools they need to fight this enemy and protect our people and preserve our freedoms...To win the war on terror, we must be able to detain, question, and, when appropriate, prosecute terrorists captured here in America, and on the battlefields around the world...We put forward a bill that ensures these (military) commissions are established in a way that protects our national security, and ensures a full and fair trial for those accused...I want to be absolutely clear with our people, and the world: The United States does not torture. It's against our laws, and it's against our values. I have not authorized it, and I will not authorize it...We're engaged in a global struggle, and the entire civilized world has a stake in its outcome. America is a nation of law. And as I work with Congress to strengthen and clarify our laws here at home, I will continue to work with members of the international community who have been our partners in this struggle...I'll continue to work with the international community to construct a common foundation to defend our nations and protect our freedoms...²¹

The President's remarks go beyond the obvious discussion of military tribunals and reveal his fervor on protecting America. In order to protect the nation and its citizens, and for the effective conduct of military operations to prevent further terrorists attacks, the President asserts it is necessary to detain certain individuals to prevent them from continuing to fight and, subsequently, to put on trial those who violate the laws of war.²² Furthermore, it magnifies the President's asserted, yet challenging, efforts in balancing the protection of human rights, respecting international law and values, and prosecuting a global war on terrorism.

The President's fervor in the interests of national security is well-recognized. However, prisoner interrogation and treatment policies which appear to override international law solely in the interests of U.S. sovereignty put us at legal, moral, and human rights crossroads and appear hypocritical of our track record to champion international justice and standards of conduct. The President's signing statement attached to the Detainee Treatment Act, which specifically prohibits inhumane treatment of prisoners in our custody, is an example of this contradiction.

Essentially, the signing statement reveals that this legislation would not limit his power to do everything he deems necessary to protect the country, including disregarding the law he signed. Likewise, civil rights advocates claim the President has infringed civil liberties and abused his broad executive powers by discounting the Geneva Conventions and fiercely supporting controversial policies of prisoner treatment, interrogation, and military tribunal practices. Similarly, critics argue that the Abu Ghraib scandal and rumored “secret” interrogation facilities away from appropriate oversight may never have been revealed if not for the prying media. These examples illuminate perceptions of unprecedented unilateral executive power, increasing levels of government secrecy, and the disregard for internationally agreed to conventions and treaties. The resulting skepticism can eventually undermine public trust and confidence in the ability to hold government accountable for its actions. Regardless of America’s past reputation, it cannot succeed strategically unless it acts both with just cause and just means.²³

Since 9/11, there have been numerous short-term tactical and operational successes in the global war on terrorism as a result of intelligence gathered from detainees. The Bush administration claims its policies on prisoner treatment, interrogation, and military tribunal practices are essential enablers in these successes and in keeping America safe. However, there are other toxic domestic and international consequences which have overridden operational successes. These consequences frame the legal, moral, and human rights crossroads which can lead to strategic failure in the global war on terrorism. According to Tom Donnelly and Vance Serchuk, research fellows at the American Enterprise Institute, some of the consequences of contentious detention policies have “made it easier for our enemies to hate us, and harder for our friends to love us.”²⁴

Arguably, prisoner abuses and the continuing debate on appropriate prisoner treatment, interrogation practices, and legal due process have challenged, if not undermined, the sincerity of America’s commitment to support and advance human rights initiatives worldwide. Unquestionably, the promotion of human dignity and rights is in concert with America’s most deeply rooted values. The United States has long sought to define itself in foreign policy by the promotion of those liberal values, including respect for human rights and basic human dignity.²⁵ Look no farther than our National Security Strategy to realize this ideal. The strategy heralds...”The United States will work to advance human dignity in word and deed, speaking out for freedom and against violations of human rights and allocating appropriate resources to advance these ideas.”²⁶

To date, the Bush administration has advantageously used the promotion of human rights as a focal point in developing relations with maturing democracies in other countries. Yet,

unsettling prisoner mistreatment, interrogation practices, and torture issues have recently sent mixed signals to countries who look to the United States to set the legal, moral, and ethical example on human rights issues. As described in an October 24, 2006, *Washington Post* article by Nick Wadhams, several governments around the world have rebutted United Nations criticism for their questionable detainee treatment by claiming they are merely following the United States example in fighting terrorism.²⁷

Actions that are grossly inconsistent or even contradictory with international treaties and our own human rights policy undercut our ability to promote human rights in fledgling democracies and to garner international support for the war on terrorism. While longtime allies and advocates of human dignity and democracy promotion are having second thoughts about the Bush “freedom agenda” and his methods, the administration faces the real possibility that human rights policies on which the President has placed his legacy could be rolled back and discredited.²⁸

Prisoner abuses and questionable interrogation practices resulting from the war on terrorism have also created civil liberties crossroads domestically. Detainee operations and the need for intelligence have prompted civil rights advocates to question the current balance between competing demands of civil liberties and national security in our own country. Is the encroachment of civil liberties warranted to collect intelligence from sources inside our borders that could preempt the next terrorist attack on American soil? Has this endeavor to balance the two priorities gone askew? Melvin Goodman, a senior fellow with the Center for International Policy, believes we are witnessing an increase in the compromise of such basic rights as fair trial, adequate defense, and freedom of communication for aliens and even American citizens. Recently, the United States held Jose Padilla and Yaser Hamdi, both American citizens, as unlawful combatants, unable to contact their lawyers or gain access to the charges against them until the courts eventually intervened on their behalf.²⁹

The media’s portrayal of U.S. prisoner mistreatment has been particularly decisive in bringing the torture debate and consequences for the United States into sharp focus. The riveting images of Iraqi prisoners being forced by U.S. military personnel into simulated sexual poses or otherwise abused at Baghdad’s notorious Abu Ghraib prison have become one of the most enduring, ironic, and, some might add, iconic images of the American’s “war on terrorism.”³⁰ Prisoner mistreatment has negatively shaped the international perception of the United States as a country with double standards or above the law with impunity to international norms. The practical consequence of this view is a festering distrust among our allies thus undermining our efforts to gain cooperation in the global war on terrorism.³¹

Furthermore, prisoner mistreatment by the U.S. military has undercut Department of Defense (DOD) support to public diplomacy. In an April 2005 report on U.S. public diplomacy, the United States Government Accountability Office (GAO) concluded foreign public opinion of the United States remained highly negative as a result of failed U.S. public diplomacy efforts. In the same report, the GAO recognized DOD's less prominent but important role in these endeavors.³² DOD's activities with foreign audiences to foster an understanding of U.S. policy and interests and, more importantly, foster good will toward the United States have been compromised as a result of U.S. military prisoner abuses.

Prisoner abuses have also provoked strong criticism from the Christian Church, one of the world's oldest institutions and prominent actors in the international environment. Energized by the Abu Ghraib prison scandal and treatment of detainees at Guantanamo Bay, the church has voiced its disapproval with the overall American policy in Iraq calling for accountability and change.³³ On the issue of prisoner treatment, the United States stands to lose support from what most consider the source of ethical and moral authority and inspiration in the world—potentially de-legitimizing U.S.-led efforts against terrorism.

The impact of prisoner abuses and controversial detainee policies goes far beyond U.S. relations with other countries. In effect, these policies and practices could effect the relations among the world's religions. Archbishop Giovanni Lajolo, a Vatican official, called the torture scandal involving U.S. soldiers "tragic for relations with Islam."³⁴ At a time when it is imperative for the religions of the world to unite against fundamental radicalism and terrorism, our adversaries will surely attempt to exploit and widen this potential rift pitting religion against religion—fueling Arab suspicion of Western intentions.

Relations between our civilian and military leaders have also been adversely affected by detainee policies and practices. Providing the best military advice to our political leaders during the formulation and execution of national security policy has always been a fundamental imperative of American civil-military relations. At a critical time when collaboration and harmony between "soldiers and civilians" are necessary in developing acceptable policy, it would seem that those relations have become strained by the discords over detainee treatment. A clear illustration of this state of affairs can be found in an October 2005 letter to Congress endorsed by 27 retired general officers.³⁵ In this letter, the generals indirectly denounced the President's interpretation of detainee policy on interrogations and treatment and strongly urged Congress to support the detainee treatment legislation posed by Senator McCain. As discussed previously, the President's dismissal of the advice of the Chairman of the Joint Chiefs of Staff to reconsider

prisoner of war status for detainees is yet another example of a widened civil-military relations gap.

Moreover, a policy exclusive of sound, values-based military advice has another potentially significant, long-term consequence on the military profession. If detention policies, which the military must execute, are fundamentally based more on ambiguous legal interpretation rather than grounded in ethics and morality, we will witness an incrementally dangerous erosion of military culture—steering away from the profession of arms where values, accountability, and purposefully discriminate use of force have been hallmarks of a unique military calling. Lou DiMarco, describing the French counterterrorism and counterinsurgency experience in Algeria from 1954 to 1962, contended the moral component of the fight was strategically decisive.³⁶ The moral component must be non-negotiable and essential in guiding just policy and the application of the military element of national power in the global war on terrorism.

The French experience in Algeria also provides an unmistakable example of how ill-conceived policy on interrogation and prisoner treatment had a profound impact on their Army. Policies that condoned illegal and immoral practices destroyed the internal integrity of the officer corps. Officers outspoken against the policies were considered disloyal and had their careers damaged, were forced to resign, or in fact, criminally prosecuted. Civilian leadership lost confidence in the Army's view of the war, and the Army was not seriously consulted as the government unsuccessfully attempted to devise a political solution to that conflict.³⁷

Ostensibly, the detention of hundreds of terrorist suspects by the military in Cuba and thousands in Iraq and Afghanistan, combined, would logically lead to a reduction in Al Qaeda and other Islamic fundamentalist terrorist organizations' capability. On closer examination, the opposite may be closer to the truth, and detainee operations may have enabled terrorist recruitment and training.

Ian Cuthbertson, in a *World Policy Journal* article, advised the use of prisons as "universities for terrorists" is hardly a new phenomenon, and this lesson has not escaped Islamic radicals.³⁸ Our adversaries asymmetrically exploit current conditions of detention (characterized by our rudimentary understanding of Islamic culture and language, an inability to detect and neutralize subtle network organization and communication efforts, and lack of skilled confinement and interrogation specialists to aggressively monitor burgeoning camp populations) to turn the detainee camp into the terrorist training camp.³⁹ American detention strategies must be mindful of practices that smother an adaptive, innovative enemy and their cause rather than enable it.

Detention practices and policies illuminate yet another ironic dilemma for the United States in choosing the right crossroad. Does the United States continue operations at facilities like Guantanamo Bay which are resource intensive and marginally effective (in gaining intelligence) or close them to improve the American image around the world? Despite ireful domestic and international petitions to close these facilities, the closure of Guantanamo Bay could signal yet another victory for terrorist organizations worldwide having used their methods to defeat government resolve similarly to the train bombings in Madrid, Spain, which toppled the sitting administration. This success would only elevate their status as terrorists, in their own eyes, and embolden them to continue their mission.

Successfully Navigating the Strategic Crossroad

The President's National Security Strategy of March 2006 posits that successfully confronting the threats and challenges of our time will require strong alliances, friendships, and international institutions, which enable us to promote freedom, prosperity, and peace in common purpose with others...that effective multinational effort will be pivotal in enabling these initiatives and overcoming these challenges.⁴⁰

Arguably, shunning the Geneva Conventions and international law orient us away from building international consensus on the treatment of terrorists and achieving our National Security Strategy. And the further we move away from working towards international interests and consensus, the less our unilateral efforts are likely to appear legitimate thereby increasing the risk to American forces operating abroad. To genuinely strengthen international efforts in the global war on terrorism and firmly place us on the road of legitimacy, this author recommends a number of actions.

First, America must demonstrate through words and actions that it treats prisoners humanely while it endeavors to balance civil liberties and security concerns. The way to achieve this goal is to gain and maintain transparency in the treatment of detainees. To that end, we should take a new, internationalized approach with detention operations. The ownership of detention facilities like Guantanamo Bay should not be purely American nor should the "jailing" of terrorist suspects default solely to the United States. The United States should lead efforts to establish an international contingent responsible for the detention of terrorist detainees under internationally accepted practices. Likewise, transparency could be enhanced through more open outside oversight with global nongovernmental organizations such as the International Committee of the Red Cross.

Secondly, the Geneva Conventions in their current form may be inadequate to address today's detainee challenges. While they provide a solid foundation, it is time for the next evolution. Therefore, America must foster an international effort to refine the Geneva Conventions and international law so their provisions are relevant and applicable to terrorist detainees and other modern breeds of combatants.⁴¹

Thirdly, the United States should promote efforts to determine an internationally acceptable solution in the prosecution of terrorist suspects. A United Nations or International Criminal Court-led approach would demonstrate universal resolve in providing justice for terrorist acts. As a result, radical fundamentalist organizations would gain no advantage by attempting to gain footholds in countries' with immature law enforcement and legal apparatus where they are less likely to be captured and more likely to avoid prosecution. Justice would be served anywhere, anytime by internationally accepted standards.

Finally, an aggressive, sustained information operations campaign must compliment the efforts described above. This campaign should promote such major themes as transparency in action to dispel government secrecy and unilateralism; concern for the careful balance between civil liberties and security; and a willingness to play a multi-lateral role in forging international consensus on the treatment of terrorist suspects.

Conclusion

The United States is at a strategic crossroad with respect to the ethical treatment of terrorist detainees and its penchant to develop intelligence purported to prevent the next terrorist attack on American soil. The Bush administration contends its detention and interrogation practices and policies are lawful, humane, and have been successful in protecting Americans. Despite these advertised advantages, these controversial policies have evoked other harmful domestic and international consequences which have eroded international trust and legitimacy, deflated popular support and opinion, increased anti-American sentiment, and weakened U.S. influence and effectiveness, overall, in the global war on terrorism.

The United States must choose the road leading to a reversal in current policies of unilateralism with respect to detainee affairs challenges. The global war on terrorism should be an international effort. With the moral component in mind, initiatives which shape detainee treatment and prosecution should be an international endeavor as well. And, the United States should play a prominent, but multi-lateral role in traversing this current crossroad.

Endnotes

¹ George W. Bush, "President Discusses Creation of Military Commissions to Try Suspected Terrorists," 6 September 2006, 2, available from <http://www.whitehouse.gov/news/releases/2006/09/20060906-3.html>; Internet; accessed 27 December 2006.

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⁴ Ibid, 1022.

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⁷ Pham, 97.

⁸ Gerald P. Fogarty, "Is Guantanamo Bay Undermining the Global War on Terror?" *Parameters* 35, no. 3 (Autumn 2005): 55.

⁹ Tim Golden, "After Terror, a Secret Rewriting of Military Law," *The New York Times*, 24 October 2004 [newspaper on-line]; available from <http://www.nytimes.com/2004/10/24/international/worldspecial2/24gitmo.html?ex=1256270400&en=f44aff040a0217ce&ei=5088>; Internet; accessed 28 February 2007.

¹⁰ Peter Katel and Kenneth Jost, "Treatment of Detainees," *CQ Researcher* 16, no. 29 (25 August 2006): 687 [database on-line]; available from CQ Researcher Online; accessed 26 December 2006.

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